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E.O. 12958: N/A
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SUBJECT: SINGAPORE: UPDATE ON INTELLECTUAL PROPERTY ISSUES

REF: A.) 08 SINGAPORE 1168
B.) 08 SINGAPORE 1329
C.) 09 SINGAPORE 186

11. SUMMARY: (SBU) Econoffs met with officials from the Intellectual Property Office of Singapore (IPOS) March 26 to discuss progress made on intellectual property rights (IPR) issues since the October review of the U.S.-Singapore Free Trade Agreement (FTA) (Ref A), and urge IPOS to focus on resolving remaining issues. While Singapore amended its law covering remuneration for Internet "simulcasts" last year (Ref B), industry is still in negotiations with broadcasters regarding fees. IPOS is examining internet service provider (ISPs) codes of conduct established in other countries, but industry contacts complain that the GOS has been too slow in urging cooperation from ISPs. Econoffs raised Verizon's Special 301 submission regarding trademark protections, and the Motion Picture Association's proposal to adopt legislation prohibiting in-theater "camcording." Econoffs also urged IPOS to consider ways to increase deterrent penalties in cases of end-user software piracy, and focus attention on combating the transshipment of IP-infringing goods. Post intends to have a series of such follow-up meetings with IPOS to continue to urge Singapore to bring local IP laws in line with FTA requirements. End Summary.

Progress on "Simulcasting"

12. (SBU) Econoffs expressed appreciation to IPOS for amending the Copyright Law to require remuneration for "simulcasting," i.e., the digital transmission of songs over the Internet (Ref B), and noted that music industry representatives had told us they were satisfied with the wording of the amendment. However, negotiations are still ongoing between the music industry and broadcasters regarding the fees broadcasters must pay. Econoffs noted that the outcome of those negotiations and the implementation of the amendment would determine whether the new protections afforded simulcasts would be adequate and meet industry's needs.

13. (SBU) IPOS is also following the progress of the simulcasting fee negotiations and agreed that at this stage it is a commercial matter for the music industry to work out with the broadcasters. IPOS will not intervene in the matter unless the talks break down and "things get ugly," ANG I-Ming, Director and Legal Counsel for IPOS, told Econoffs. IPOS officials indicated that it was too early to tell whether the Copyright Tribunal would eventually be needed to settle the negotiations.

14. (SBU) Ahead of the meeting with IPOS, representatives from Recording Industry Singapore (RIS) and recording industry association IFPI told Econoff that fee negotiations have not been easy, as broadcasters are coming to terms with having to pay for

something they previously got for free. RIS and IFPI attempted to negotiate with SPH UnionWorks, which is owned by Singapore Press Holdings (SPH) and operates two channels, but SPH UnionWorks countered with fee amounts too low for RIS and IFPI to accept. RIS and IFPI contacts told us that SPH UnionWorks refused to negotiate and has opted instead to simply stop streaming the music content and threatened to end other promotional privileges that record companies have received in SPH's other media outlets. (NOTE: RIS told us that all Singapore broadcasters have stopped streaming content temporarily until agreement is reached on the remuneration scheme. However, SPH UnionWorks seems to have opted for a permanent stoppage rather than meet the requirements of the amended law. End note.) MediaCorp, the largest broadcaster in Singapore with 18 channels, has postponed meetings and delayed responding to RIS regarding fees. RIS contacts said that the delays could be due to internal restructuring at the company. RIS and IFPI are unsure whether negotiations with MediaCorp will be successful, considering its clout in the market.

15. (SBU) SAFRA Radio, which has two channels, has been the most responsive, and RIS hopes to conclude a fee agreement within the next few weeks, Barbara Wong, General Manager of RIS, told Econoff March 30. Post will continue to monitor the situation and report any developments.

Facilitating Cooperation between ISPs and Industry

16. (SBU) IPOS is studying different agreements and codes of conduct that are being established worldwide to address internet piracy and the role internet service providers (ISPs) must play. Ang noted that no code of conduct has succeeded in resolving piracy, saying

SINGAPORE 00000311 002 OF 003

that even if ISPs take down a site or suspend an individual's account, infringers will pop up elsewhere. Econoffs agreed that completely eradicating Internet piracy is a challenge, but pointed out that every effort needs to be made to make it more difficult and that Singapore must meet its FTA obligations. Ang said that IPOS had a meeting scheduled with RIS and IFPI representatives to discuss the technical aspects of the piracy issue and how ISPs can contribute. Barbara Wong later confirmed that the meeting took place, but RIS was disappointed that the meeting only involved GOS officials and did not include ISPs.

17. (SBU) Only recently, as other countries announced their own plans to work with ISPs, has Singapore appeared to be more open to addressing this issue. Contacts from MPA and RIS complained to Econoff in several conversations that local ISPs were not responsive to the numerous notifications industry provided regarding infringing sites, and ISPs were not fulfilling their obligations to take down such sites. RIS and IFPI provided Econoff with letters to IPOS and a timeline documenting several months of correspondence with the IPRB (Intellectual Property Rights Branch of the Singapore police) regarding a music-sharing site, Ayunite. RIS first brought it to IPRB's attention in July 2008, but the site was just taken down in March of this year.

18. (SBU) Post will continue to report on this issue, but would welcome guidance on ISP codes of conduct that we could share with IPOS.

Verizon's Concerns Regarding Trademark Protections

19. (SBU) During the 2009 Special 301 process, Verizon submitted its concerns that Singapore does not adequately protect famous or "well-known" marks (Ref C). In discussions following the 301 submission, local and U.S.-based legal counsel for Verizon told Econoff that there is a Singapore wood flooring firm called Verizon Wood International Pte Ltd., which has not registered the name Verizon, but is using it in commerce. Verizon has consulted with outside legal counsel regarding what recourse it has against Verizon Wood. Gregory Kahn, Assistant General Counsel, South and Southeast Asia for Verizon Business, told Econoff that one challenge Verizon faces is that Verizon Wood has not registered its name. If it had,

Verizon would have had an opportunity to block the registration. Moreover, outside legal counsel for Verizon told the company that it would be difficult to bring a case against Verizon Wood because Singapore's trademark law does not appear to adequately protect a "well-known" mark from use by a firm in an unrelated industry. Econoff has asked Verizon to provide a more detailed analysis of the Singapore law, the protections it does or does not provide, and what Verizon suggests IPOS change to bring the law in line with the FTA and other international standards.

¶10. (SBU) Econoffs alerted IPOS to Verizon's concerns, explaining that more information will be forthcoming. IPOS could not explain in the March 26 meeting how it might address a case such as this in which the company alleged to be infringing has not registered for a trademark. We will continue to work with Verizon and IPOS on this issue and report any developments.

Restrictions Against In-Theater "Camcording"

¶11. (SBU) IPOS requires much more information regarding the problem of in-theater "camcording" of movies before it will adopt any changes to its existing laws, Ang said. Although industry is aware of at least three cases of camcording that have occurred in Singapore, Ang said that only a few incidents did not constitute an alarming trend. Ang said Singapore has criminalized the recording and distribution of pirated movies, but its laws do not conclude that anyone recording part of a film "for a laugh" intends to distribute and sell the recording on the black market. Currently, theater workers can eject a customer caught recording a film, but there is no law in place giving police the authority to arrest and question someone caught recording, Ang said. IPOS requested more information from Econoffs regarding laws and penalties in the United States against in-theater "camcording." Ang acknowledged that MPA had provided IPOS with suggested edits to Singapore's law, but he did not indicate IPOS's position regarding MPA's suggested changes. IPOS officials noted that this issue is also under discussion within Anti-Counterfeiting Trade Agreement (ACTA) talks.

Deterrent Penalties for End-User Software Piracy

SINGAPORE 00000311 003 OF 003

¶12. (SBU) IPOS officials told Econoffs that the law protecting copyrights and outlining penalties for software end-user piracy are sufficient, and it is up to the prosecutors to request a penalty that fits the crime. In IPOS's view, a judgment in the case of PP v. PDM International, a case in which the total value of the software pirated was far greater than the fines charged (Ref A), was based on mitigating factors, such as how cooperative the defendants were with authorities. IPOS does not believe it has set a problematic precedent. Econoffs conveyed to IPOS that one solution proposed by the Business Software Alliance (BSA) would be to give prosecutors the latitude to break up the infringement charges differently, so that they totaled a higher fine in aggregate. IPOS needs to examine a range of cases in which the penalties were considered low before making any changes to the current system, Ang said.

"Self-Help" Cases and Transshipment of Counterfeits

¶13. (SBU) BSA and other industry contacts oppose Singapore's reliance on a "self-help" model that puts a great deal of responsibility on industry to conduct investigations and build cases against IP-infringing companies or individuals. Investigating and building a case is time-consuming and expensive, Andy Leck, an attorney with Baker & McKenzie, Wong & Leow, told Econoffs in a separate meeting. He further noted that such "self-help" cases do not always lead to more effective enforcement. Leck and others have argued that even in cases when industry has brought extensive evidence to Singapore police and customs officials, the authorities do not always act on it, nor do they inform industry of any actions taken.

¶14. (SBU) Econoffs urged IPOS officials to focus more on the issue of transshipped IP-infringing goods, and asked about what kind of customs recordal mechanism is currently in place. Econoffs shared with IPOS that industry contacts told us that the Hong Kong port system allows companies and their IPR officials to share information, such as images comparing legitimate and counterfeit logos and locations of legitimate factories, with customs officials to help them target shipments more effectively and contact appropriate company officials in the event that customs interdicts a shipment of IP-infringing goods. Leck and other industry representatives would like Singapore to adopt similar programs. Ang agreed this is an issue that requires coordination with other GOS agencies, and indicated that he would try to find out what kind of system exists at Singapore's port.

SHIELDS